

By: Smith of Tarrant

H.B. No. 3241

A BILL TO BE ENTITLED

AN ACT

relating to the civil and criminal consequences of engaging in certain intoxication offenses or refusing to submit to the taking of a specimen to test for intoxication.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 5(d), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(d) In all other cases the judge may grant deferred adjudication unless:

(1) the defendant is charged with an offense:

(A) under Section [~~49.04, 49.05, 49.06,~~]  
49.07[~~7~~] or 49.08, Penal Code, or for which punishment may be increased under Section 49.09, Penal Code; or

(B) for which punishment may be increased under Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any one of those subsections; or

(2) the defendant:

(A) is charged with an offense under Section 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the victim, or a felony described by Section 13B(b) of this article; and

(B) has previously been placed on community

1 supervision for any offense under Paragraph (A) of this  
2 subdivision.

3 SECTION 2. Section 411.081(e), Government Code, is amended  
4 to read as follows:

5 (e) A person is entitled to petition the court under  
6 Subsection (d) only if during the applicable period described by  
7 Subsection (d)(1), (2), or (3), as appropriate, the person is not  
8 convicted of or placed on deferred adjudication community  
9 supervision under Section 5, Article 42.12, Code of Criminal  
10 Procedure, for any offense other than an offense under the  
11 Transportation Code punishable by fine only. A person is not  
12 entitled to petition the court under Subsection (d) if the person  
13 has been previously convicted or placed on deferred adjudication  
14 for:

15 (1) an offense requiring registration as a sex  
16 offender under Chapter 62, Code of Criminal Procedure;

17 (2) an offense under Section 20.04, Penal Code,  
18 regardless of whether the offense is a reportable conviction or  
19 adjudication for purposes of Chapter 62, Code of Criminal  
20 Procedure;

21 (3) an offense under Section 19.02, 19.03, 22.04,  
22 22.041, 25.07, or 42.072, Penal Code; ~~or~~

23 (4) any other offense involving family violence, as  
24 defined by Section 71.004, Family Code; or

25 (5) an offense under Chapter 49, Penal Code, other  
26 than an offense that is a Class C misdemeanor.

27 SECTION 3. Chapter 49, Penal Code, is amended by adding

Section 49.03 to read as follows:

Sec. 49.03. REFUSAL TO SUBMIT TO TAKING OF SPECIMEN. (a) A person commits an offense if the person:

(1) is arrested for an offense relating to the operating of a motor vehicle while intoxicated, an offense of operating an aircraft while intoxicated, or an offense of operating a watercraft while intoxicated; and

(2) refuses to submit to the taking of a specimen of the person's blood or breath at the request of and as designated by a peace officer.

(b) For purposes of this section, "offense relating to the operating of a motor vehicle while intoxicated," "offense of operating an aircraft while intoxicated," and "offense of operating a watercraft while intoxicated" have the meanings assigned by Section 49.09(c), Penal Code, and include an offense under Section 106.041, Alcoholic Beverage Code.

(c) An offense under this section is a Class B misdemeanor, with a minimum term of confinement of 120 hours of continuous confinement.

(d) An offense under this section is not a lesser included offense under:

(1) Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08; or

(2) Section 106.041, Alcoholic Beverage Code.

(e) Evidence of an offense under this section may be admitted in the prosecution of an offense arising out of the same criminal episode.

SECTION 4. Sections 49.09(a), (b), (d), and (g), Penal Code, are amended to read as follows:

(a) Except as provided by Subsection (b), an offense under Section 49.04, 49.05, 49.06, or 49.065 is a Class A misdemeanor, with a minimum term of confinement of 30 days, if it is shown on the trial of the offense that the person has been one time previously ~~[been]~~ convicted of or placed on deferred adjudication for ~~[one time of]~~ an offense relating to the operating of a motor vehicle while intoxicated, an offense of operating an aircraft while intoxicated, an offense of operating a watercraft while intoxicated, or an offense of operating or assembling an amusement ride while intoxicated.

(b) An offense under Section 49.04, 49.045, 49.05, 49.06, or 49.065 is a felony of the third degree if it is shown on the trial of the offense that the person has been ~~[previously been convicted]~~:

(1) one time previously convicted of or placed on deferred adjudication for an offense under Section 49.08 or an offense under the laws of another state if the offense contains elements that are substantially similar to the elements of an offense under Section 49.08; or

(2) two times previously convicted of or placed on deferred adjudication for any other offense relating to the operating of a motor vehicle while intoxicated, operating an aircraft while intoxicated, operating a watercraft while intoxicated, or operating or assembling an amusement ride while intoxicated.

(d) For the purposes of this section, a conviction for an

1 offense listed in Subsection (c) [~~under Section 49.04, 49.05,~~  
2 ~~49.06, 49.065, 49.07, or 49.08~~] that occurs on or after September 1,  
3 1994, is a final conviction, whether the sentence for the  
4 conviction is imposed or probated.

5 (g) A conviction or deferred adjudication may be used for  
6 purposes of enhancement under this section or enhancement under  
7 Subchapter D, Chapter 12, but not under both this section and  
8 Subchapter D.

9 SECTION 5. Section 524.036, Transportation Code, is amended  
10 to read as follows:

11 Sec. 524.036. APPEARANCE OF WITNESSES; FAILURE TO APPEAR.

12 (a) A person, including a peace officer or expert witness, may not  
13 be compelled to appear at a hearing under this subchapter.

14 (b) A person who requests a hearing and fails to appear  
15 without just cause waives the right to a hearing and the  
16 department's determination is final.

17 SECTION 6. Section 708.102(c), Transportation Code, is  
18 amended to read as follows:

19 (c) The amount of a surcharge under this section is \$1,000  
20 per year, except that the amount of the surcharge is:

21 (1) \$1,500 per year for a second or subsequent  
22 conviction within a 36-month period; and

23 (2) \$2,000 for a first or subsequent conviction if it  
24 is shown on the trial of the offense that, following the person's  
25 arrest for the offense and during the same criminal episode, the  
26 person also refused to submit to the taking [an analysis] of a  
27 specimen of the person's blood, breath, or urine at the request of

1 and as designated by a peace officer ~~[showed an alcohol~~  
2 ~~concentration level of 0.16 or more at the time the analysis was~~  
3 ~~performed]~~.

4 SECTION 7. Section 724.012(b), Transportation Code, is  
5 amended to read as follows:

6 (b) A peace officer shall require the taking of a specimen  
7 of the person's breath or blood if:

8 (1) the officer arrests the person for an offense  
9 under Chapter 49, Penal Code, involving the operation of a motor  
10 vehicle or a watercraft;

11 (2) either:

12 (A) the person was the operator of a motor  
13 vehicle or a watercraft involved in an accident that the officer  
14 reasonably believes occurred as a result of the offense and, ~~[+~~

15 ~~(3)]~~ at the time of the arrest, the officer  
16 reasonably believes that as a direct result of the accident:

17 (i) ~~[(A)]~~ any individual has died or will  
18 die; or

19 (ii) ~~[(B)]~~ an individual other than the  
20 person has suffered serious bodily injury; or

21 (B) at the time of the arrest, the officer  
22 possesses or receives reliable information from a credible source  
23 that the person has been previously convicted two or more times of  
24 an offense under Chapter 49, Penal Code, involving the operation of  
25 a motor vehicle or a watercraft; and

26 (3) ~~[(4)]~~ the person refuses the officer's request to  
27 submit to the taking of a specimen voluntarily.

SECTION 8. Section 724.015, Transportation Code, is amended to read as follows:

Sec. 724.015. INFORMATION PROVIDED BY OFFICER BEFORE REQUESTING SPECIMEN. Before requesting a person to submit to the taking of a specimen, the officer shall inform the person orally and in writing that:

(1) if the person refuses to submit to the taking of the specimen, that refusal:

(A) is an offense under Section 49.03, Penal Code;

(B) may be admissible in a subsequent prosecution;

(C) may result in a suspension of [(2) if the person refuses to submit to the taking of the specimen,] the person's license to operate a motor vehicle or in a denial to issue the person a license, regardless of [will be automatically suspended,] whether [or not] the person is subsequently prosecuted for the underlying offense [as a result of the arrest, for not less than 180 days]; and

(D) may result in additional administrative sanctions, including the assessment of a \$2,000 per year surcharge on the person's license during the 36-month period following any conviction that results from prosecution of the underlying offense [(3) if the person is 21 years of age or older and submits to the taking of a specimen designated by the officer and an analysis of the specimen shows the person had an alcohol concentration of a level specified by Chapter 49, Penal Code, the person's license to

1 ~~operate a motor vehicle will be automatically suspended for not~~  
2 ~~less than 90 days, whether or not the person is subsequently~~  
3 ~~prosecuted as a result of the arrest,~~

4 ~~[(4) if the person is younger than 21 years of age and~~  
5 ~~has any detectable amount of alcohol in the person's system, the~~  
6 ~~person's license to operate a motor vehicle will be automatically~~  
7 ~~suspended for not less than 60 days even if the person submits to~~  
8 ~~the taking of the specimen, but that if the person submits to the~~  
9 ~~taking of the specimen and an analysis of the specimen shows that~~  
10 ~~the person had an alcohol concentration less than the level~~  
11 ~~specified by Chapter 49, Penal Code, the person may be subject to~~  
12 ~~criminal penalties less severe than those provided under that~~  
13 ~~chapter,~~

14 ~~[(5) if the officer determines that the person is a~~  
15 ~~resident without a license to operate a motor vehicle in this state,~~  
16 ~~the department will deny to the person the issuance of a license,~~  
17 ~~whether or not the person is subsequently prosecuted as a result of~~  
18 ~~the arrest, under the same conditions and for the same periods that~~  
19 ~~would have applied to a revocation of the person's driver's license~~  
20 ~~if the person had held a driver's license issued by this state];~~  
21 and

22 (2) [(6)] the person has a right to a hearing on any  
23 [the] suspension of the person's license to operate a motor vehicle  
24 or denial to issue the person a license if, not later than the 15th  
25 day after the date on which the person receives [the] notice of  
26 suspension or denial or [on which the person] is considered to have  
27 received [the] notice [by mail] as provided by law, the department



1 receives, at its headquarters in Austin, a written [~~demand,~~  
2 ~~including a facsimile transmission, or a~~] request [~~in another form~~  
3 ~~prescribed by the department~~] for the hearing.

4 SECTION 9. Section 724.032(b), Transportation Code, is  
5 amended to read as follows:

6 (b) The director must approve the form of the refusal  
7 report. The report must:

8 (1) show the grounds for the officer's belief that the  
9 person had been operating a motor vehicle or watercraft powered  
10 with an engine having a manufacturer's rating of 50 horsepower or  
11 above while intoxicated; and

12 (2) contain a copy of[+  
13 [~~(A) the refusal statement requested under~~  
14 ~~Section 724.031, or~~

15 [~~(B)~~] a statement signed by the officer that the  
16 person refused to[+]

17 [~~(i)~~] submit to the taking of the requested  
18 specimen[~~, and~~

19 [~~(ii) sign the requested statement under~~  
20 ~~Section 724.031]~~.

21 SECTION 10. Section 724.064, Transportation Code, is  
22 amended to read as follows:

23 Sec. 724.064. ADMISSIBILITY IN CRIMINAL PROCEEDING OF  
24 SPECIMEN ANALYSIS. (a) Notwithstanding Rule 403, Texas Rules of  
25 Evidence, on [~~On~~] the trial of a criminal proceeding arising out of  
26 an offense under Chapter 49, Penal Code, [~~involving the operation~~  
27 ~~of a motor vehicle or a watercraft,~~] or an offense under Section

1 106.041, Alcoholic Beverage Code, evidence of the alcohol  
2 concentration or presence of a controlled substance, drug,  
3 dangerous drug, or other substance as shown by analysis of a  
4 specimen of the person's blood, breath, or urine or any other bodily  
5 substance taken at the request or order of a peace officer is  
6 admissible.

7 (b) Evidence of alcohol concentration that is admissible  
8 under Subsection (a) and is obtained not later than three hours  
9 after the incident giving rise to the criminal proceeding creates a  
10 presumption that the person's alcohol concentration at the time of  
11 the incident was the same as or greater than the level shown by that  
12 evidence.

13 (c) This section does not prevent the use of other evidence  
14 of a person's alcohol concentration at the time of an incident  
15 giving rise to a criminal proceeding.

16 SECTION 11. The following are repealed:

17 (1) Sections 49.09(e) and (f), Penal Code; and

18 (2) Sections 524.038(d), 524.039, and 724.031,  
19 Transportation Code.

20 SECTION 12. The changes in law made by this Act apply only  
21 to an offense committed on or after the effective date of this Act.  
22 An offense committed before the effective date of this Act is  
23 governed by the law in effect when the offense was committed, and  
24 the former law is continued in effect for that purpose. For  
25 purposes of this section, an offense was committed before the  
26 effective date of this Act if any element of the offense was  
27 committed before that date.

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1           SECTION 13.   This Act takes effect September 1, 2005.